

RUSSELL FISCHER
Claimant

HAVEN STEEL PRODUCTS
Respondent

FIREMAN'S FUND INSURANCE
Insurance Carrier

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

ORDER

ISSUES

- Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant suffered accidental injury on February 25, 1995, when he fell after slipping on spilled oil and grease and grabbed hold of a quench line with his left arm. Claimant experienced immediate pain in his left arm and shoulder. The injury to his shoulder is not contested and treatment for the shoulder is not at issue at this time.

Claimant alleges he later began experiencing symptoms in his low back with radiculopathy into his leg. Claimant was referred to Dr. Clarence R. Hart for examination and treatment. Dr. Hart first saw claimant on February 25, 1995, the date of accident. At that time, claimant provided no history of the injury to his low back, although he did have numerous complaints regarding his shoulder. Dr. Hart and Dr. Tim R. Pauly of the same office examined and treated claimant for several months with the examination and treatment consistently limited to claimant's left upper extremity and shoulder. The first mention of low-back complaints in Dr. Hart's records occurred on October 17, 1995. At that time claimant provided no specific history of traumatic onset.

Claimant was referred to Craig Longhofer, R.P.T. for physical therapy in March and April, 1995. Mr. Longhofer's notes consistently involve treatment to claimant's left shoulder and are void of any mention of claimant's low back.

Claimant was referred to Dr. Kris Lewonowski on March 15, 1996. At that time, claimant provided Dr. Lewonowski with a history of immediate onset of pain in his shoulder when he fell and grabbed the line. He also alleged an onset of back and leg pain on the date of accident. When Dr. Lewonowski was given the history of Dr. Hart's medical treatment through October 17, 1995, with no mention of back pain, he agreed it would be difficult if not impossible to connect claimant's low-back complaints with the February 25, 1995, injury. Claimant's examination with Dr. Hart as late as October 13, 1995, involved only left shoulder complaints.

Claimant was referred to Dr. Cal Olmstead on January 8, 1996, for an examination. At that time Dr. Olmstead found claimant to smell of alcohol. He found a normal neurological examination of claimant although with certain falsified findings. He didn't believe a mechanism of injury had occurred which could explain claimant's organic complaints. He went on to state that claimant had a plethora of complaints which changed in nature, many of which were non-physiological and could not be explained in the absence of objective neurological abnormalities. He suspected that the claimant was exploiting the system and didn't really have anything physically wrong with him.

In proceedings under the Workers Compensation Act, the burden of proof is on the claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. K.S.A. 44-501 and K.S.A. 44-508(g).

It is the function of the trier of facts to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the

claimant and any other testimony that may be relevant to the question of disability. The trier of facts is not bound by medical evidence presented in the case and has a responsibility of making its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

In this instance, the medical evidence is overwhelming that claimant expressed no low-back symptoms or complaints for nearly 8 months after the date of accident. The first registered low-back complaint occurred on October 17, 1995. No doctor who testified in this matter was willing to connect the claimant's low-back complaints to the injury of February, 1995 absent some more contemporaneous connection between the complaints and the accident. One doctor, Dr. Olmstead, went so far as to say he felt claimant was falsifying his complaints in order to exploit the workers compensation system.

After reviewing the abundant medical evidence, the Appeals Board finds claimant has failed to prove any connection between his low-back complaints and the injury of February 25, 1995. Therefore, the Order of Administrative Law Judge Bruce E. Moore denying claimant benefits for the low-back complaints should be affirmed.

With regard to Issue #2, an Administrative Law Judge is not limited in the number of preliminary hearings that may be held in a case, even in the absence of new evidence. Zago v. Anderson Interiors, Docket No. 202,528 (October 1997).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore, dated March 17, 1998, should be and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Richard A. Boeckman, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director